

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

FREE SPEECH SYSTEMS, LLC,
Debtor.

Bankruptcy Case No. 22-60043

W. MARC SCHWARTZ AND
SCHWARTZ ASSOCIATES, LLC
Appellants,

Civil Action No. 23-00463

v.

U.S. TRUSTEE
Appellee.

APPELLANTS' [UNOPPOSED] MOTION TO DISMISS

W. Marc Schwartz and Schwartz Associates, LLC (the “Appellants”), the appellants in the above-captioned proceeding before the District Court, hereby moves for the dismissal of this appeal pursuant to Rule 8023(b) of the Federal Rules of Bankruptcy Procedure. In support of this Motion, the Appellants respectfully state the following:

Background

1. The Appellants initiated this action by filing a notice of appeal with the Bankruptcy Court on February 3, 2023. The matter was docketed with this Court on February 8, 2023.

2. Appellants subsequently reached a settlement (the “Settlement”) with the Debtor in the related bankruptcy case (the “Bankruptcy Case”) regarding this appeal and a separate request for relief in the Bankruptcy Case. A motion seeking approval of the Settlement was filed in the Bankruptcy Case.

3. Appellants filed an unopposed motion seeking the extension of the briefing deadlines in this proceeding, pending the ruling of the U.S. Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) on the approval of the Settlement. [Dkt. No. 5]. This Court granted the motion extending the briefing deadlines. [Dkt. No. 7].

4. On April 28, 2023, the U.S. Bankruptcy Court for the Southern District of Texas, entered an order [Bankr. Dkt. No. 579] (the “Bankruptcy Court Order”) granting the Debtor’s Motion for Order Approving Settlement. A copy of the Bankruptcy Court Order is attached hereto as Exhibit A. No party appealed the Bankruptcy Court Order and it is now a final, non-appealable order.

5. As the result of the Bankruptcy Court Order, the Appellants no longer seek to prosecute the appeal reflected in this proceeding.

Relief Requested

6. Appellants seek the entry of an order (a) dismissing this proceeding with prejudice and (b) assigning costs to the Appellants. The appealed order of the Bankruptcy Court shall remain a valid, final order.

Basis for Relief

7. Rule 8023(b) of the Federal Rules of Bankruptcy Procedure provides that “[a]n appeal may be dismissed on the appellant’s motion on terms agreed to by the parties

or fixed by the district court or BAP.” There is ample reason to dismiss the appeal reflected in this proceeding.

8. In light of the Bankruptcy Court Order, the Appellants no longer seek to prosecute the Appeal. No briefing has been submitted by any party and continuing the appeal would simply require the parties and Court to expend effort to adjudicate a ruling of the Bankruptcy Court that the Appellants no longer desires to have reversed or vacated.

9. Further, it is debatable whether the Appellants continue to have standing. The appellants contend that they had standing as a “person aggrieved” primarily because the Bankruptcy Court’s ruling below could have potentially affected the Appellants’ right to compensation for services provided in the Bankruptcy Case. Under the Bankruptcy Court Order, however, any claims or rights to payment held by Appellants have been resolved. Even if the Appellants still have standing on other grounds, the Appellants do not seek to litigate the issue and does not assert so here.

10. Finally, the requested dismissal is not opposed. No party to this proceeding seeks incur the effort and/or expense of continuing this appeal even if Appellant continues to have standing.

WHEREFORE, premises considered, the Appellants request that the Court enter an order dismissing this proceeding consistent with the foregoing motion.

Dated: May 16, 2023

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC

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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing motion, exclusive of the case caption, table of contents, table of authorities, signature block, and certificates contains 875 words, as registered by the word processor with which the motion was prepared.

/s/ Michael P. Ridulfo
Michael P. Ridulfo

CERTIFICATE OF CONFERENCE

I hereby certify that on May 16, 2023, I contacted the attorney for the U.S. Trustee regarding the relief requested in the above motion. The attorney for the U.S. Trustee indicated that there was no opposition to the relief requested in the motion.

/s/ Michael P. Ridulfo
Michael P. Ridulfo

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served through the Court's CM/ECF system on all parties registered to receive such service and by separate email:

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